

## TITLE TWELFTH.

Of crimes and offences, proceedings in criminal cases, punishments and prisons, and incidental provisions.

- CHAPTER 153. Of offences against the sovereignty of the state.
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## CHAPTER 153.

## OF OFFENCES AGAINST THE SOVEREIGNTY OF THE STATE.

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| <p>SECT. 1. Treason.</p> <p>2. Two witnesses necessary for conviction, unless on confession.</p> <p>3. Misprision of treason.</p> <p>4. Necessary proof.</p> | <p>SECT. 5. Limitation, as to time of prosecution.</p> <p>6. Usurpation of jurisdiction, by foreign power, within limits defined by the treaty of 1783.</p> |
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SECTION 1. Whoever shall be guilty of treason, by levying war against the state, adhering to its enemies, giving them aid and comfort, shall be punished with death. Treason.  
Const. art. 1,  
§ 12.

SECT. 2. No person shall be indicted and convicted of treason, unless on the testimony of two witnesses to the same overt act, or by confession in open court. Two witnesses  
necessary for  
conviction, un-  
less on confes-  
sion.

SECT. 3. If any person shall have knowledge of any treason committed, or to be committed, and shall conceal the same, and shall not, as soon as may be, give information thereof upon oath to the governor of the state, a judge of a court of record, or to a Const. art. 1,  
§ 12.  
Misprision of  
treason.  
1821, 1, § 2, 3.

**CHAP. 153.** justice of the peace, to the end, that the offender therein may be apprehended, and be amenable to justice, he shall be deemed guilty of misprision of treason; and shall be punished by imprisonment in the state prison, not more than five years, or by fine, not exceeding one thousand dollars, and by imprisonment in the county jail, not more than one year.

Necessary  
proof.  
1821, 1, § 5.

**SECT. 4.** No person shall be indicted and convicted of misprision of treason, unless the treason concealed and not informed of, as mentioned in the preceding section, shall be proved by the testimony of two witnesses to the same overt act, or by one witness to one overt act, and by another witness to another overt act of the same species of treason, or by voluntary confession in open court.

Limitation, as  
to time of pros-  
ecution.  
1821, 1, § 7.

**SECT. 5.** No person shall be indicted and convicted of treason or misprision of treason, unless the indictment therefor shall be found within three years next after the commission of the treason.

Usurpation of  
jurisdiction by  
foreign power,  
within limits  
defined by the  
treaty of 1783.  
1829, 446.

**SECT. 6.** If any person, not a citizen of the United States, or any person, under the authority or color or pretence of authority from any foreign prince, state or government, shall enter upon any lands, cut any timber, serve any civil or criminal process, or exercise any act of jurisdiction, authority or ownership, or shall pretend or attempt or claim any right, or threaten to do any of the said acts within the limits of this state, as described in and by the treaty of seventeen hundred and eighty three, between the United States and Great Britain, such person, and every person who shall aid or encourage the same, shall be deemed guilty of a high misdemeanor, and shall be punished, on conviction in the supreme judicial court or district court in any county in the state, by fine and imprisonment at the discretion of the court, according to the aggravation of the offence.

## CHAPTER 154.

### OF OFFENCES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

**SECT. 1.** Murder defined.

2. Murder in the first degree.
3. Murder in the second degree.
4. Jury to find the degree on trial; but the court, on confession.
5. Manslaughter.
6. Jurisdiction in case of death in the state, from a wound in a duel, without the state.
7. Seconds in any such fatal duel, deemed accessory to murder before the fact.
8. Plea of former conviction or acquittal without the state.
9. Party to a duel, whether as principal, second, surgeon or otherwise. Challenges.

**SECT. 10.** Accepting a challenge. Aiding or encouraging such challenge or acceptance.

11. Going out of the state for the purpose of a challenge, or duel. Conviction in another state may be pleaded in bar.
12. Posting, and contemptuous provocations to a duel.
13. Maiming, and malicious disfiguring.
14. Robbery.
15. Punishment, if with a dangerous weapon.
16. Punishment in other cases.
17. Rape.
18. Forcible abduction, and compulsion to marry, &c.

- SECT. 19. Abduction with intent to compel, &c.
20. Forcible confinement and kidnapping.
21. Where the offence may be tried. Subsequent consent, no justification, unless proved to be without duress, or fraud.
22. Exposure and abandonment of children.
23. Masters of vessels, transporting minors and indented servants out of the state.
24. Enlistment of a minor into the U. S. army, without the consent of his parent, &c.
25. Enticing such out of the state for the purpose of enlisting.
- SECT. 26. Threatening communications to extort money, or for other purposes.
27. Assault with intent to ravish, if the female be ten years old, or upwards.
28. If under ten years of age.
29. Assault by a person armed, with intent to murder, &c.
30. Assault with such intent, by a person not armed.
31. Other felonious assaults.
32. Attempt to murder by poison, or other means, not constituting an assault.
33. Assault and battery defined.
34. Punishment thereof.
35. Jurisdiction of justices of the peace, in cases of assault and battery.
- CHAP. 154.

SECTION. 1. Whoever shall unlawfully kill any human being, with malice aforethought, either express or implied, shall be deemed guilty of murder. Murder defined. 13 Mass. 356.

SECT. 2. Whoever shall commit murder with express malice aforethought, or in perpetrating or attempting to perpetrate any crime, punishable with death, or imprisonment in the state prison for life, or for an unlimited term of years, shall be deemed guilty of murder of the first degree, and shall be punished with death. Murder in the first degree. 1821, 2, § 1. 9 Pick. 496.

SECT. 3. Whoever shall commit murder, otherwise than is set forth in the preceding section, shall be deemed guilty of murder of the second degree, and shall be punished by imprisonment for life in the state prison. Murder in the second degree.

SECT. 4. Upon the trial of an indictment for murder, the jury, if they find the defendant guilty, shall inquire and, by their verdict, ascertain, whether he be guilty of murder of the first or second degree; but, if such defendant be convicted upon his confession in open court, the court shall proceed by the examination of witnesses, to determine the degree of the murder, and to award sentence accordingly. Jury to find the degree, on trial; but the court, on confession.

SECT. 5. Whoever shall unlawfully kill any human being in the heat of passion, upon sudden provocation, without malice aforethought, either express or implied, or in any manner shall be guilty of manslaughter, at common law, shall be punished by imprisonment in the state prison, not more than ten years, or by fine, not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year. Manslaughter. 1821, 2, § 3.

SECT. 6. Every person, being an inhabitant or resident of this state, who shall, within the same, make an appointment or engagement to fight a duel with deadly weapons, and shall fight such duel, without the jurisdiction of this state, and, in so doing, shall inflict a mortal wound on any person, whereof such person shall afterwards die, within this state, shall be deemed guilty of murder of the first degree, within this state, and be punished accordingly; and may be indicted, tried and convicted in the county, where such death shall happen. Jurisdiction, in case of death in the state, from a wound in a duel out of the state.

CHAP. 154. SECT. 7. Every person, being an inhabitant or resident of this state, who shall, by previous appointment or engagement made within the same, be the second of either party in such duel, as is mentioned in the preceding section, and shall be present, as such second, when such mortal wound is inflicted, whereof death shall ensue within this state, shall be deemed to be accessory, before the fact, to murder of the first degree within this state, and be punished accordingly; and may be indicted, tried and convicted, in the county where the death shall happen.

Seconds in any such fatal duel, deemed accessory to murder before the fact.

Plea of former conviction or acquittal without the state.

SECT. 8. Any person, indicted under either of the two preceding sections, may plead a former conviction or acquittal of the same offence in any other state or country; and such plea, if admitted or established, shall be a bar to all further or other proceedings against such person for the same offence within this state.

Party to a duel, whether as principal, second, surgeon, or otherwise. Challenges. 1821, 2, § 7.

SECT. 9. Every person, who shall fight a duel with deadly weapons, or who shall be present at the fighting of such duel, as an aid, second or surgeon, or shall advise, encourage or promote such duel, although no homicide ensue, and every person, who shall challenge another to fight a duel, or shall send or deliver any verbal or written message, purporting or intended to be such challenge, although no duel shall ensue, shall be punished by imprisonment in the state prison, not more than twenty years, or by fine, not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year; and shall also be incapable of holding, being elected, or appointed to any office, or place of honor, trust or profit, under this state, for the term of twenty years after conviction.

Accepting a challenge. Aiding or encouraging such challenge or acceptance. 1821, 2, § 8.

SECT. 10. Every person, who shall accept such challenge, and every person, who shall engage to act as a second or as a surgeon on such acceptance, or who shall knowingly carry and deliver any such challenge or acceptance, or who shall advise, encourage or promote the same, although no duel ensue, shall be punished by imprisonment in the county jail, not more than one year, and by fine not exceeding one thousand dollars; and shall also be incapacitated, as mentioned in the preceding section, for the term of five years after conviction.

Going out of the state, for the purpose of a challenge or duel. Conviction in another state may be pleaded in bar.

SECT. 11. If any inhabitant or resident of this state, shall leave the same for the purpose of eluding the operation of the provisions of the two preceding sections, with intent to give or accept a challenge, or to fight a duel out of the state, or to aid, as a second or as a surgeon in any such duel out of the state, he shall be deemed as guilty, and be subject to like punishment, as if the offence had been committed within this state; and may be indicted, tried and convicted in the county where he may reside; and a former conviction or acquittal for the same offence, in any other state or country, may be pleaded on such trial, and, if admitted or established, shall be a bar to any further or other proceedings against such person for the same offence.

Posting, and contemptuous provocations to a duel.

SECT. 12. If any person shall post another, or, in writing or print, use any reproachful or contemptuous language to or concerning another, for not fighting a duel, or for not sending or not accepting a challenge, he shall be punished by imprisonment in the county jail, not more than one year, and by fine, not exceeding one hundred dollars.

SECT. 13. If any person, with malicious intent to maim or disfigure, shall cut or maim the tongue, put out or destroy an eye, cut or tear off an ear, cut, slit or mutilate the nose or lip, or cut off or disable a limb or any other member of another person, he shall be punished by imprisonment in the state prison, not more than twenty years.

CHAP. 154.  
Maiming, and  
malicious dis-  
figuring.  
1821, 2, § 4.

SECT. 14. If any person shall, with force or violence, or by putting in fear, feloniously steal and take from the person of another any property, that is the subject of larceny, he shall be deemed guilty of robbery; and every such offender shall be punished according to the aggravation of the offence, as is provided in the two following sections.

Robbery.  
1821, 7, § 7.  
7 Mass. 242.

SECT. 15. If such offender, at the time of such robbery, shall be armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed, or if, being so armed, he shall wound or strike the person robbed, or if he shall have any confederate aiding and abetting him in such robbery, present and so armed, he shall be punished by imprisonment in the state prison, for life.

Punishment, if  
with a danger-  
ous weapon.  
1821, 7, § 8.  
1829, 430, § 1.  
17 Mass. 359.

SECT. 16. If such offender shall commit such robbery otherwise than as mentioned in the preceding section, he shall be punished by imprisonment in the state prison for any term of years, or for life.

Punishment in  
other cases.  
1821, 7, § 7.  
1829, 430, § 1.

SECT. 17. If any man shall ravish and carnally know any female of the age of ten years or more, by force and against her will, or shall unlawfully or carnally know and abuse any female child under the age of ten years, he shall be punished by imprisonment in the state prison, for life.

Rape.  
1821, 3, § 1.  
1829, 430, § 5.

SECT. 18. If any person shall take any woman unlawfully and against her will, and; by force, menace or duress, compel her to marry him, or any other person, or to be defiled, he shall be punished by imprisonment in the state prison, for life, or any term of years.

Forcible abduc-  
tion, and com-  
pulsion to mar-  
ry, &c.

SECT. 19. If any person shall take any woman, unlawfully and against her will, with intent to compel her by force, menace or duress, to marry him or any other person, or to be defiled, he shall be punished by imprisonment in the state prison, not more than ten years.

Abduction, with  
intent to com-  
pel, &c.

SECT. 20. Whoever, without lawful authority, shall confine or imprison any person in this state against his will, or shall forcibly transport or carry any person out of the state, or from one place to another place within the state, without his consent, or shall forcibly seize, inveigle, convey or kidnap any person, with intent to cause such person to be so confined or imprisoned, or so transported or carried against his will and consent, or shall sell as a slave, or in any manner transfer; for any term, the service of any negro or mulatto, or other person of color, who shall have been unlawfully seized, inveigled or kidnapped as aforesaid, he shall be punished by imprisonment in the state prison, not more than five years, or by fine, not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

Forcible con-  
finement and  
kidnapping.  
1821, 22, § 1.  
1838, 323, § 1.

SECT. 21. Every offence, mentioned in the preceding section, may be indicted and tried, either in the county, in which the same

Where the of-  
fence may be  
tried. Subse-  
quent consent

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no justification,  
unless proved  
to be without  
duress, or fraud.  
1838, 323, § 2.

Exposure and  
abandonment of  
children.

Masters of ves-  
sels, transport-  
ing minors and  
indentured ser-  
vants out of the  
state.  
1821, 22, § 2.  
2 Fairf. 103.

Enlistment of  
minors into the  
U. S. army,  
without consent  
of parents, &c.  
1821, 22, § 3.

Enticing such  
out of the state,  
for the purpose  
of enlisting.  
1821, 22, § 4.

Threatening  
communica-  
tions to extort  
money, or for  
other purposes.

Assault, with  
intent to ravish,  
if the female be  
ten years old or  
upwards.  
1821, 3, § 3.  
15 Mass. 187.  
2 Pick. 380.  
4 Pick. 252.  
If under ten  
years of age.  
1821, 3, § 4.  
Assault, by a  
person armed,

may have been committed, or in which such person may have been taken or confined, or to which he may have been carried or brought; and, on the trial, the consent of such person shall not be a defence, unless it shall be made to appear to the jury, that such consent was not obtained by fraud, threats or duress.

SECT. 22. If the father or mother of any child, under the age of six years, or any person to whom such child shall have been confided, shall expose such child in any highway, street, field, house or outhouse, or in any other place, with intent wholly to abandon it, he or she shall be punished by imprisonment in the state prison, not more than five years, or by fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year.

SECT. 23. Every master or commander of any ship or vessel, who shall knowingly carry or transport, out of this state, any person under the age of twenty one years, or any apprentice, or indentured servant, without the consent of his parent, master and guardian, shall be punished by a fine not exceeding two hundred dollars, and shall be further liable to such parent, master or guardian, for all damages sustained, in an action on the case.

SECT. 24. If any person within this state shall enlist, or cause to be enlisted, into the army of the United States, any minor under the age of twenty one years, knowing him to be such minor, without the consent in writing of his parent, master and guardian, and such minor shall, within six months after his enlistment, be removed out of this state, so that he cannot be had before the tribunals of this state, by writ of habeas corpus, he shall be punished by a fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year.

SECT. 25. If any person, knowing one to be a minor under the age of twenty one years, shall persuade him to depart from this state, with intent to enlist into the army of the United States, without the consent of his parent, master and guardian, he shall be punished, as provided in the preceding section.

SECT. 26. If any person shall, either verbally or by any written or printed communication, maliciously threaten to accuse another of a crime or offence, or to do any injury to the person or property or another, with intent thereby to extort any money or pecuniary advantage whatever, or to compel the person, so threatened, to do any act against his will, he shall be punished by imprisonment in the state prison, not more than two years, or by fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year.

SECT. 27. If any person, with intent to commit a rape, shall assault any female of the age of ten years or more, he shall be punished by imprisonment in the state prison, not more than ten years, or by fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year.

SECT. 28. If any person, with intent to commit a rape, shall assault a female under the age of ten years, he shall be punished by imprisonment in the state prison, not more than twenty years.

SECT. 29. If any person, being armed with a dangerous weapon,

shall assault another, with intent to murder, kill, maim, rob, steal, or to commit arson or burglary, he shall be punished by imprisonment in the state prison, not more than twenty years. **CHAP. 154.**

**SECT. 30.** If any person, not being armed with a dangerous weapon, shall assault another with intent to murder, kill, maim, rob, steal, or to commit arson or burglary, he shall be punished by imprisonment in the state prison, not more than ten years, or by fine, not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year.

with intent to murder, &c.  
1821, 2, § 5, 6.  
1821, 7, § 9.  
Assault, with such intent, by a person not armed.  
1821, 2, § 6.  
1821, 7, § 11.  
1836, 241, § 1.

**SECT. 31.** If any person shall assault another with intent to commit any felony or crime, punishable with imprisonment in the state prison, where the punishment for such assault is not otherwise herein before prescribed, he shall be punished by imprisonment in the state prison, not more than five years, or by fine, not exceeding five hundred dollars, and by imprisonment in the county jail not more than one year.

Other felonious assaults.

**SECT. 32.** If any person, with intent to murder, shall mingle poison in any food, drink or medicine, or shall poison any spring, well or reservoir of water, or shall, in any way, attempt to kill or murder by poisoning, drowning, suffocating, or by any other means, not constituting an assault with an intent to kill or murder, he shall be punished by imprisonment in the state prison, not more than twenty years.

Attempt to murder by poison, or other means, not constituting an assault.  
1836, 241, § 2.

**SECT. 33.** If any person shall unlawfully offer or attempt to strike, hit, touch, or do any violence, however small, to the person of another, in a wanton, wilful, angry or insulting manner, with or without a weapon, or through the instrumentality or intervention of any thing animate or inanimate, and under circumstances, where an intention and existing ability, at the time, to do some violence to the person of another is apparent, he shall be deemed guilty of an assault; and, if such attempt be effected, and the person of another be struck, hit, touched or injured, in however slight degree, in manner above mentioned, the offender shall be deemed guilty of an assault and battery.

Assault and battery defined.

**SECT. 34.** Whoever shall be convicted, upon indictment, of an assault, or an assault and battery, where no other punishment is prescribed, shall be punished by a fine, not exceeding two hundred dollars, and by imprisonment in the county jail, not more than one year.

Punishment thereof.

**SECT. 35.** Every justice of the peace shall have concurrent jurisdiction, with the district court, of all assaults and batteries committed in his county, which are not of a high and aggravated nature; and, on conviction, he may punish the offender by fine, not exceeding ten dollars, or by imprisonment in the county jail, not more than one month.

Jurisdiction of justices of the peace, in cases of assault and battery.  
1821, 76, § 1.

## CHAP. 155.

## CHAPTER 155.

## OF OFFENCES AGAINST HABITATIONS AND OTHER BUILDINGS, INCLUDING ARSON, BURGLARY AND SIMILAR CRIMES.

## SECT. 1. Arson, in the night time.

2. Malicious burning a dwelling house in the day time.

3. Malicious burning of certain other buildings, by night.

4. Burning the same in the day time.

5. Burning ships, vessels, bridges, dams, &amp;c.

6. Burning produce, fences, lumber, and other property.

7. Wife liable, though the property burnt be her husband's.

## SECT. 8. Burglary defined.

9. Punishment, if offender is armed or has confederates.

10. Punishment, if without such aggravation.

11. With felonious intent, entering dwelling houses, or certain other buildings, or vessels, under special aggravations, but not constituting burglary.

12. What constitutes a dwelling house.

Arson, in the night time.  
1829, 430, § 4.  
16 Mass. 105.  
16 Pick. 154.  
17 Pick. 395.

SECTION 1. If any person shall, wilfully and maliciously, set fire to the dwelling house of another, or to any outbuilding adjoining the same, or to any other building, owned by himself or another, with the intent, that such dwelling house shall be burnt, and by the kindling of such fire, or the burning of such other building, such dwelling house shall be burnt, in the night time, he shall be punished with death; but, if the defendant shall prove on trial, and the jury shall find, that at the time of committing such offence, there was no person lawfully in the dwelling house so burnt, he shall be punished by imprisonment, for life, in the state prison.

Malicious burning of a dwelling house in the day time.  
1821, 4, § 2.

SECT. 2. If any person shall, wilfully and maliciously, set fire to any dwelling house of another, or any out building adjoining the same, or to any other building owned by himself or any other person, with the intent, that such dwelling house shall be burnt, and, by the kindling of such fire, or by the burning of such other building, such dwelling house shall be burnt, in the day. time, he shall, on conviction of such offence, be punished by imprisonment, for life, in the state prison.

Malicious burning of certain other buildings by night.  
1821, 4, § 2.  
3 Fairf. 214.

SECT. 3. If any person shall, wilfully and maliciously, set fire to any meeting house, court house, jail, town house, college or academy, or any other building, erected for public use, or to any store, barn, stable, shop or office of another, being within the curtilage of a dwelling house, so that such dwelling house shall be endangered by such firing, and, by the kindling of such fire, any such public or other building shall be burnt, in the night time, he shall be punished by imprisonment in the state prison, for life or any term of years.

Burning the same in the day time.  
1821, 4, § 3.

SECT. 4. If any person shall, wilfully and maliciously, set fire to, and burn any such building, and, in the manner or by the means mentioned in the preceding section, in the day time, he shall be punished by imprisonment in the state prison, not more than ten years.

Burning vessels, bridges, dams, &c.  
1821, 4, § 3.

SECT. 5. If any person shall, wilfully and maliciously, burn any other building, or any ship or vessel, or any bridge, lock, dam, or flume of another, he shall be punished by imprisonment in the state prison, not more than ten years.

Burning produce, fences,

SECT. 6. If any person shall, wilfully and maliciously, burn



any corn, grain, hay, or other produce, or any fences, wood, boards or other lumber, or any soil, vegetables, trees, underwood or any other property of another, he shall be punished by imprisonment in the state prison, not more than three years. CHAP. 155.  
lumber, and  
other property.  
1821, 4, § 4.

SECT. 7. The preceding sections shall severally extend to a married woman, who shall commit either of the offences therein, without the consent of her husband, though the property burnt, or set on fire, may belong, in part or in whole, to her husband. Wife liable,  
though the  
property burnt  
be her hus-  
band's.

SECT. 8. If any person, with intent to commit a felony, shall, in the night time, break and enter, or, having entered with such intent, shall, in the night time, break a dwelling house, any person being then lawfully therein, such offender shall be deemed guilty of burglary; and shall be punished, according to the aggravation of the offence, as is provided in the two following sections. Burglary defin-  
ed.  
1821, 6, § 2.  
7 Mass. 245.  
8 Pick. 354.

SECT. 9. If such offender, at the time of committing such burglary, shall be armed with a dangerous weapon, or shall so arm himself after having entered such dwelling house, or shall actually assault any person being lawfully therein, or shall have any confederate, present, aiding and abetting in such burglary, he shall be punished by imprisonment in the state prison, for life. Punishment, if  
offender be  
armed, or have  
confederates.  
1821, 6, § 1.

SECT. 10. If such offender shall commit such burglary, otherwise than as mentioned in the preceding section, he shall be punished by imprisonment in the state prison, for life or any term of years. Punishment, if  
without such  
aggravation.  
1821, 6, § 2.

SECT. 11. If any person, with intent to commit a felony, shall, in the day time, break and enter, or shall, in the night time, enter, without breaking, any dwelling house, or shall, at any time, break and enter any office, bank, shop, warehouse, ship or vessel, or any building in which any goods, merchandise or valuable things shall be kept for use, sale or deposit, any person, being lawfully therein and put in fear, such offender shall be punished by imprisonment in the state prison not more than ten years; but, if no person was lawfully in such building, ship or vessel, and put in fear, at the time of committing such offence, such offender shall be punished by imprisonment in the state prison, not more than five years, or by fine, not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year. With felonious  
intent, entering  
dwelling hous-  
es, or certain  
other buildings  
or vessels, un-  
der special ag-  
gravations, but  
not constitut-  
ing burglary.  
1821, 7, § 5.  
8 Mass. 490.  
22 Pick. 1.

SECT. 12. Any house, prison, jail or other permanent edifice, usually occupied by any person or persons, by lodging therein, at nights, shall be deemed a dwelling house of any such persons, although such occupants may, for a time, be absent, leaving furniture or goods, with an intention of returning; but no warehouse, barn or other outhouse, shall be deemed a dwelling house or part of a dwelling house, unless the same shall be joined to or connected and occupied with, and as a part of, the dwelling house. What consti-  
tutes a dwelling  
house.

shall be found within six years after the offence shall have been committed; provided, that the offender shall not flee from justice; and that no other limitation for the prosecution of such offender is provided by law; but any period, during which the party charged was not usually and publicly resident within this state, shall not be reckoned as a part of the said six years.

CHAP. 167.

1839, 362.  
1840, 11.

## CHAPTER 168.

### OF SENTENCE AND EXECUTION THEREOF IN CRIMINAL CASES.

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| <p>SECT. 1. What sentence to be passed, when none is provided by statute.</p> <p>2. Where imprisonment may be either in the county jail, or house of correction.</p> <p>3. Conditional sentence, to pay fine and costs, or be sent to the house of correction in ten days.</p> <p>4. When sentence may be either fine or imprisonment, or both.</p> <p>5. Sureties to keep the peace, &amp;c. required in some cases of conviction.</p> <p>6. Minutes made by the clerk, when sufficient authority for the officer.</p> | <p>SECT. 7. Removal of convicts to the state prison, upon sentence.</p> <p>8. Convicts under sentence of death, to be also sentenced to labor in the state prison, in the mean time.</p> <p>9. Execution not to take place within one year. Warrant of the executive therefor.</p> <p>10. How sentence of death shall be executed.</p> <p>11. Sheriff and certain designated persons to be present.</p> <p>12. Sheriff's return to be made and filed in the office of secretary of state.</p> |
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SECTION 1. When a person shall be legally convicted of any offence, for the punishment of which no provision is made by statute, the court shall award such sentence as is conformable to the common usage and practice in this state, according to the nature of the offence, and not repugnant to the constitution.

What sentence to be passed, when none is provided by statute.  
1821, 54, § 1.

SECT. 2. Any person convicted before the supreme judicial court or district court, of any crime or offence punishable, in part or in whole, by imprisonment in the county jail, may be sentenced to suffer imprisonment, either in the county jail or house of correction at their discretion, to be employed and kept at work there, in the same manner as rogues, vagabonds, and idlers are by law to be employed, when committed to such house.

Where imprisonment may be either in the county jail, or house of correction.  
1821, 111, § 7.

SECT. 3. Either of said courts may sentence any person, convicted of any offence mentioned in the preceding section, conditionally, to pay a fine with costs of prosecution, or, in case he do not pay the same within ten days, that he be immediately thereafter conveyed to the house of correction, and there be kept at work as aforesaid, for a term, not exceeding six months.

Conditional sentence, to pay fine and costs, or to be sent to the house of correction in ten days.  
1821, 111, § 8.

SECT. 4. Whenever it is provided that an offender shall be punished by imprisonment and a fine, the court may sentence him to either of those punishments without the other, or to both.

When sentence may be either fine or imprisonment, or both.

SECT. 5. Every court, before whom any person shall be convicted of an offence, not punishable by death or confinement in the state prison, may, in addition to the punishment by law prescribed, require such person to recognize to the state, with suffi-

Sureties to keep the peace, &c. required in some cases of conviction.

CHAP. 168. cient sureties, in a reasonable sum, to keep the peace or be of good behavior, or both, for a term not exceeding two years, and stand committed till he shall so recognize.

Minutes made by the clerk, when sufficient authority for the officer.

SECT. 6. When a person, convicted of an offence, shall be sentenced to pay a fine or costs, or to be imprisoned in the county jail or house of correction, the clerk of the courts shall, as soon as may be, make out and deliver to the sheriff or some officer in court, a transcript of the minutes of the court of the conviction and sentence duly certified by him; and this shall be a sufficient authority for the officer to execute such sentence.

Removal of convicts to the state prison upon sentence. 1824, 282, § 1.

SECT. 7. When any convict is sentenced to confinement in the state prison, the clerk of the court, before whom the conviction may take place, shall make out a warrant under seal of the court directed to the warden of the prison, requiring him to cause such convict, without needless delay, to be removed from the county jail to the state prison; and the warden and all sheriffs and jail keepers are required strictly to obey the directions of it; and the clerk shall, as soon as may be, deliver the same warrant to the sheriff of the county, who is required forthwith to deliver the same to said warden.

Convicts, under sentence of death, to be also sentenced to labor in the state prison, in the mean time. 1837, 292, § 1.

SECT. 8. When any person shall be convicted of any crime punishable with death, and sentenced to suffer such punishment, he shall, at the same time, be sentenced to hard labor in the state prison, until such punishment of death shall be inflicted.

Execution not to take place within one year. Warrant of the executive therefor. 1837, 292, § 2.

SECT. 9. And no person, so sentenced and imprisoned, shall be executed in pursuance of such sentence, within one year from the day such sentence of death was passed, nor until the whole record of such proceedings or case shall be certified by the clerk of said court, under the seal thereof, to the supreme executive authority of the state, nor until a warrant shall be issued by said executive authority, under the great seal of this state, directed to the sheriff of the county wherein the state prison shall be situated, commanding the sheriff to cause the said sentence of death to be carried into execution.

How sentence of death shall be executed.

SECT. 10. The punishment of death shall, in every case, be inflicted by hanging the convict by the neck until he is dead, and the sentence shall, at the time directed by the warrant, be executed within the walls of the state prison, or the inclosed yard of the same.

Sheriff, and certain designated persons to be present.

SECT. 11. The sheriff of the county shall be present at the place of execution, unless prevented by sickness or other casualty, and also two of his deputies designated by him. He shall request the county attorney and twelve citizens, including a surgeon or physician, and shall permit the counsel of the prisoner, such minister of the gospel as the criminal shall desire, and his relations, to be present, and such officers of the prison, deputies, constables and military guard as he may see fit, but no others.

Sheriff's return to be made, and filed in the office of the secretary of state.

SECT. 12. Whenever a sheriff shall inflict the punishment of death upon any convict, in obedience to a warrant from the governor, he shall make return thereof under his hand with his doings thereon, to the secretary's office as soon as may be; and shall also file in the clerk's office of the court, where the conviction was had, an attested copy of the warrant and return thereon; and the clerk

shall place the same on file with the indictment, and subjoin to the record of the sentence a brief abstract of the sheriff's return on the warrant. CHAP. 168.

## CHAPTER 169.

### OF PROCEEDINGS FOR PREVENTION OF CRIMES.

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| <p>SECT. 1. Of the commencement of criminal proceedings.</p> <p>2. Magistrates may require sureties for the peace and good behavior.</p> <p>3. Of the examination of the complainant.</p> <p>4. When a warrant may issue.</p> <p>5. In certain cases sureties required, for keeping the peace, &amp;c. without binding to appear at any court.</p> <p>6. Party to be discharged, on complying.</p> <p>7. On refusal, to be committed to the county jail; but still entitled to a hearing on his appeal.</p> <p>8. Proceedings, if the complaint be not sustained. Costs, if malicious or frivolous.</p> | <p>SECT. 9. When party, complained of, shall pay costs.</p> <p>10. Appeal to the next district court.</p> <p>11. Proceedings upon the appeal.</p> <p>12. Consequences, if the appellant fail to prosecute.</p> <p>13. Recognizance may be taken, after commitment.</p> <p>14. Return of such recognizance.</p> <p>15. When magistrate may require sureties, without a formal complaint.</p> <p>16. Persons going armed, without reasonable cause.</p> <p>17. Power of court, to remit the penalty of a recognizance.</p> <p>18. Sureties on recognizances may surrender their principals, as in case of bail in civil actions.</p> |
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SECTION 1. No person shall be held to answer in any court for an alleged crime or offence, other than contempt of court, unless upon an indictment by a grand jury, except in the following cases:

*First.* When a prosecution by information is expressly authorized by statute.

*Second.* In proceedings before a municipal or police court, or a justice of the peace.

*Third.* In proceedings before courts martial.

SECT. 2. The justices of the supreme judicial court, of the district court, justices of municipal courts and police courts in vacation, as well as in open court, and justices of the peace, in their respective counties, shall have power to cause all laws made for the preservation of the public peace to be kept; and, in the execution of that power, may require persons to give security to keep the peace, or be of the good behavior, or both, in the manner provided in this chapter.

SECT. 3. Any such magistrate, on complaint made to him, that any person has threatened to commit an offence against the person or property of another, shall examine the complainant on oath, and also any witnesses who are produced, and reduce the complaint to writing, and cause the complainant to subscribe the same.

SECT. 4. If there should appear to such magistrate, on an examination of the facts, that there is just cause to apprehend and fear the commission of such offence, he shall issue a warrant under his hand and seal, containing a recital of the substance of the com-

Of the commencement of criminal proceedings.

Magistrates may require sureties for the peace and good behavior.

Of the examination of the complainant.

When a warrant may issue. 1821, 76, § 1.